IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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RSA. NO. 158 OF 2003.
DATE OF DECISION: SEPTEMBER 10, 2007.

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1. State of Punjab, through the Collector, Patiala, District Patiala;

2. The Chief Engineer, Punjab PWD (B&R) Branch, Patiala; and

3. The Superintending Engineer, Construction Circle No.2, Punjab PWD (B&R) Branch, Patiala.

Appellants-Defendant.

Versus.

Amrit Kaur wife of S. Paramjit Singh, Senior Assistant, aged 52 years, working in the office of Superintending Engineer, Const. Circle No.2, Punjab PWD (B&R) Branch, Patiala.

Plaintiff-Respondent.

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Before: Hon'ble Mr. Justice R.S.Madan.

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Present: Shri Sushant Maini, Deputy Advocate General, Punjab, for the appellants.

Shri Manu K.Bhandari, Advocate, for the respondent.

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R.S.Madan, J

The present Regular Second Appeal is directed against the judgment and decree dated July 23, 2002 passed by Additional District Judge, Patiala, vide which he decreed the suit of the plaintiff-respondent to the effect that the impugned order No. 70 dated December 27, 1999 and the order bearing No. 72 dated January 04, 2000, were set aside and the plaintiff-appellant (before the appellate court) was held entitled to all the benefits as if the impugned orders have not been passed.

In brief the facts of the case are that the plaintiff-respondent who was working as Senior Assistant with the appellants-defendants, filed a suit for declaration to the effect that the order dated August 08, 1994

passed by appellant-respondent No.3 reverting her from the post of Senior Assistant to the post of Junior Assistant, is illegal, null and void. The aforesaid suit of the plaintiff was decreed by the learned Civil Judge (Senior Division), Patiala vide order dated April 12, 1996 holding therein that the order August 08, 1994 passed by respondent No.3 whereby reverting the plaintiff-appellant from the post of Senior Assistant to the post of Junior Assistant is nullity and that she is entitled to continue to work on the post of Senior Assistant, with all benefits and privileges attached to the post of Senior Assistant, as if the impugned order had not been passed.

Aggrieved by the aforesaid order dated April 12, 1996, the respondent-State of Punjab filed Civil Appeal before the Additional District Judge, Patiala, who vide his order dated January 16, 1998 dismissed the same.

Dis-satisfied with the judgment and decree of the learned Additional District Judge, Patiala, dated January 16, 1998, the State of Punjab filed Regular Second Appeal before this Court which was dismissed vide order dated November 03, 1998. The State of Punjab after the dismissal of the R.S.A. by this Court, knocked the door of the Hon'ble Supreme Court by filing S.L.P. which too was dismissed on February 05, 1999.

In SLP No. 376-379 of 1999, titled as Saroj Rani and others Versus State of Punjab, the Hon'ble Supreme Court has issued certain guide-lines with respect to the promotions to the post of Assistant/Senior Assistant to the effect that all the vacancies prior to January 21, 1991 are to be filled up by those who are qualified by passing the examination and exemptees would have no claim on such vacancies. Taking shelter of the guide-lines, Appellant-respondent No.3 passed an order reverting the plaintiff-respondent from the post of Senior Assistant to Junior Assistant with effect from March 19, 1986 and reduced the pay of the appellant from

Rs.8100/- to Rs.6800/- vide order No. 72 dated 4.1.2000. However, the appellant was again promoted vide office order No. 72 dated 4.1.200 but her basic pay was not enhanced to Rs.8100/-. The legality and propriety of this order, were questioned by the appellant in the suit under reference, which was dismissed by the learned Civil Judge (Senior Division), Patiala.

Upon notice of the suit, the appellant-defendants put in appearance and filed the written, statement inter alia taking preliminary objections, regarding non-issuance of notice under Section 80 of the Code of Civil Procedure, maintainability of the suit, cause of action, valuation and that the plaintiff-respondent has not availed the departmental opportunity and averred that she had to be revered vide impugned order in accordance with the latest decision of the Supreme Court dated August 24, 1999 passed in C.W.P. Nos. 11660, 11661 of 1995 and 1329 of 1999 and the S.L.P. No. 376-379 of 1999 titled as Saroj Rani and others Versus State of Punjab and others, wherein the Hon'ble Supreme Court framed the following guide-lines:-

> *1. All the vacancies on the post of Assistant/Senior Assistants prior to January 21, 1991 are to be filled up by those who qualified by passing the examination and exemptees would have no claim on such vacancies.*
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> *2) All the vacancies after January 21, 1991 shall be filled in the ratio of 70 percent and 30 percent between exemptees and qualifiers in the examination, respectively, for each year in question till all the existing qualifiers are absorbed.*
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> *3) All the promotions or reversions made has to be readjusted within the aforesaid frame work, irrespective of any interim orders then in force.*
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> *4) Any incumbent who worked on the post of Assistant Senior Assistant on account of promotion orders and in case they have to be reverted or have been reverted, any salary or consequential amount paid to such employees for working on the post of Assistant/Senior Assistant shall not be taken back from them. Similarly, if any employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she will not be entitled to any arrears of salary.*

5) State shall complete this exercise of promotion on the above said formula on or before the December 31,1999. Till then the existing arrangement shall continue.

Keeping in view the guide-line No.1, framed by the Hon'ble Supreme Court in Saroj Rani's case (supra), the plaintiff-respondent was reverted and thus the dismissal of the suit filed by the plaintiff-respondent was sought.

The plaintiff-respondent filed the replication, controverting the pleas raised by the appellant-defendants in the written statement and reiterated the case set up in the plaint.

From the pleadings of the parties, the following issues were framed by the learned trial court:-

1) Whether the office order No. 70 dated 27.12.1999 reverting the plaintiff to the post of Junior Assistant w.e.f. 19.03.1986 is illegal, null and void? OPP.

2) Whether the office order No. 72 dated 4.1.2000 vide which the basic pay of the plaintiff was reduced to Rs.6800/- from Rs.8100/- is illegal, null and void? OPP

3) Whether the plaintiff is entitled to continue to work on the post of Senior Assistant with all rights, privileges and salary etc.? OPP.

4) Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP.

5) Whether the plaintiff served upon the defendants a legal notice under Section 80 CPC prior to the institution of this suit? If not, its effect? OPP.

6) Whether the plaintiff has not availed the departmental remedies, if so, its effect? OPD.

7) Relief.

The plaintiff stepped into the witness box before the trial court as PW-1 and tendered documents Ex.P1 to Ex.P10, whereas the respondents after examining Ravi Chawla DW1 and tendering documents Ex.D1 to D-13 closed the evidence.

After hearing the learned counsel for the parties, the learned Civil Judge (Senior Division), Patiala, dismissed the suit of the plaintiff-respondents vide judgment and decree dated March 14, 2002.

Aggrieved by the impugned judgment and decree passed by the learned Civil Judge, the plaintiff-respondent filed an appeal before the learned Additional District Judge, Patiala, who after hearing the learned counsel for the parties, was of the view that admittedly the plaintiff-respondent was promoted to the post of Senior Assistant vide order dated March 19, 1986 Ex.D1, moved an application dated March 22, 1991 whereby she sought the exemption from passing the departmental examination and that application was accepted vide order dated April 12, 1991 by the Superintending Engineer- respondent No.3. Under the aforesaid orders passed by the Superintending Engineer-respondent No.3, exemption from passing the examination was granted to the plaintiff and even then she was reverted to the post of Junior Assistant vide order dated August 08, 1994. It was this order which the plaintiff-respondent has challenged before the trial court and her suit was decreed. The order passed by the learned trial court was up-held upto the Supreme Court. Resultantly, the reversion order dated August 08, 1994 was declared nullity and she was promoted to the post of Senior Assistant with effect from March 19, 1986.

The learned Additional District Judge, Patiala while returning the findings in favour of the plaintiff-respondent has held that so far as the plaintiff-respondent is concerned, her case has attained finality after the dismissal of S.L.P. filed by the State of Punjab. Once the controversy has been set at rest by the Hon'ble Supreme Court, and had attained finality, the plaintiff-respondent was rightly promoted to the post of Senior Assistant and her right of promotion to the post of Senior Assistant would not be taken away by the appellants/defendants under the guise of order passed

by the Supreme Court Ex. D-7 in Saroj Rani's case (supra), wherein the appellant was not a party. The Hon'ble Supreme Court while passing the judgment in Saroj Rani's case, framed certain guide-lines, which have already been quoted in the preceding paragraph. The learned Ist Appellate Court further observed that while issuing the guide-lines at page 38-39, the Hon'ble Supreme Court has directed that all the vacancies of the post of Senior Assistants prior to January 21, 1991 were to be filled in by those persons who qualified by passing the examination and exemptees would have no claim on such vacancies. Admittedly, the plaintiff-respondent was promoted to the post of Senior Assistant with effect from March 19, 1986 and his earlier reversion order was set aside by the Hon'ble Supreme Court and that being so her post could not be assumed as vacant by the appellant-defendants for the purposes of invoking the judgment Ex. D-7. Therefore, the case of the plaintiff-respondent could not come within the ambit of vacancy existing prior to January 21, 1991. Keeping in view the judgment Ex. D-7 passed in Saroj Rani's case (supra), is not applicable to the appellant especially when the promotion of the plaintiff with effect from March 19, 1986 as Senior Assistant has been up-held by the trial court and the appeal as well as the S.L.P. filed by the State of Punjab before the Hon'ble Supreme Court, were dismissed and the judgments passed by the learned trial court, by this Court were up held by the Supreme Court.

Even otherwise before implementing the order dated December 27, 1999 Ex. D-4 and office order No. 70 dated December 27, 1999 could not be passed without affording the opportunity of hearing to the plaintiff-respondent, ignoring the principle of natural justice.

After going through the judgment and decree passed by the Ist Appellate Court, this Court is of the view that no substantial question of law is involved in this appeal. The findings have been given by the learned trial court as well as by the Appellate Court, purely on facts of the case. Thus,

keeping in view the fact that the promotion of the plaintiff-respondent has since been up-held upto the Apex Court, with the dismissal of the SLP on 5.2.1999 filed by the State of Punjab, no grounds to interfere with the judgment and decree passed by the Ist Appellate Court, are made out.

As a result, the appeal being devoid of merit, is hereby dismissed.

September 10, 2007. (R.S.Madan)
Malik Judge